



GAIL FARBER, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

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IN REPLY PLEASE

REFER TO FILE C-1

March 4 April 19, 2011

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors

**REVISED**  
**FIND CONTRACTOR IN DEFAULT**  
**BRIDGE SEISMIC RETROFIT**  
**QUEENSWAY SOUTHBOUND RAMPS J & AND K**  
**OVER HARBOR SCENIC DRIVE**  
**CITY OF LONG BEACH**  
**(SUPERVISORIAL DISTRICT 4)**  
**(3 VOTES)**

**SUBJECT**

This action is to find the contractor, A.M Classic Construction, Inc., in default of the contract and authorize the Director of Public Works or her designee to terminate A. M Classic Construction, Inc's right to perform under the contract and serve written notice on the project surety, Arch Insurance Company, of America to complete the work of the contract.

**IT IS RECOMMENDED THAT YOUR BOARD:**

Find the contractor, A.M Classic Construction, Inc., in default of the contract and authorize the Director of Public Works or her designee to terminate A M Classic Construction, Inc's right to perform under the contract and serve written notice on the project surety, Arch Insurance Company of America to complete the work of the contract.

## PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of this letter is to find the contractor, A.M. Classic Construction, Inc. (A.M. Classic) in default of the contract and authorize the Director of Public Works (Director) or her designee to terminate A.M. Classic's right to perform under the contract and serve written notice on the project surety, Arch Insurance Company of America (Arch) to complete the work of the contract.

~~On December 2, 2008, your Board advertised and gave authority to the Director of Public Works (Director) or her designee to award and execute a contract with the apparent responsible contractor with the lowest responsive bid and approve the Faithful Performance and Labor and Materials bonds and insurance submitted by the contractor. On March 17, 2009, the Department of Public Works (Public Works) awarded a contract to A.M. Classic Construction, Inc., (A.M. Classic), for the seismic strengthening of the Queens Way Southbound, Ramps J & K, over Harbor Scenic Drive project. Arch Insurance Company of America furnished the contractually required payment and performance bonds for 100 percent of the contract amount.~~

~~The required start date for this project was April 15, 2010, and shortly thereafter A.M. Classic started construction work. The contractor was observed using construction equipment considerably larger than shown on its shoring plans and moved the equipment closer to the shoring than allowed by its own shoring design. During the construction activities, cracking was observed on the adjacent roadway and despite being notified of the damage caused by its procedure, the contractor refused to adjust its operations.~~

~~On November 19, 2010, A.M. Classic demobilized from the project site. On December 10, 2010, Public works notified A.M. Classic to resume work or risk being found in default. The project is approximately 35 percent complete. As part of its operations, A.M. Classic removed existing concrete beyond what was necessary to construct the work and abandoned the site without ensuring the safety of the bridge. Public Works used its own maintenance crews to install timber supports to protect the bridge.~~

~~Consequently, since A.M. Classic has not performed any work since Public Works' December 10, 2010, notice, and in order to move toward completion of this bridge seismic retrofit project, it is recommended that your Board find A.M. Classic in default of the contract and authorize the Director to terminate A.M. Classic's right to perform under the contract. Public Works will then serve written notice on the project surety, Arch~~

~~Insurance Company of America, to complete the work of the contract in accordance with the plans and specifications.~~

### **PRIOR PRESENTATION OF THIS MATTER TO YOUR BOARD**

On March 8, 2011, this matter came before your Board as Agenda Item 29. Mr. Asghar Mahdavi, the president of A.M. Classic requested that your Board reject the Department of Public Works' recommendation and investigate Public Work's recommendation. Your Board directed Public Works and County Counsel to hold a hearing to determine if there is a reasonable basis for the contractor's failure to perform the requested work.

Public Works has scheduled a hearing as directed. The hearing is scheduled for April 8, 2011. The results of the hearing and the hearing officer's recommendation will be provided and forwarded to each Board member prior to this matter coming before the Board for action.

### **Implementation of Strategic Plan Goals**

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1) The recommended actions will provide for completion of the work at no additional cost to Public Works except for minimal administrative expenses

### **FISCAL IMPACT/FINANCING**

There will be no impact to the County General Fund.

This project is entirely within the City of Long Beach. The project has been administered under the Highway Bridge Program as covered by Agreement 76078 with the State of California. Under this program, Federal funds allocated to local agencies are used to finance a portion of the qualifying costs of the bridge seismic retrofit projects. The remaining portion of the costs of the project will be funded with State Proposition 1B funds. Qualifying costs are apportioned 88.53 percent Federal and 11.47 percent State Proposition 1B funds. Funding for this project is included in the Fourth Supervisorial District's Road Construction Program in the Fiscal Year 2010-11 Road Fund Budget.

If Arch fulfills its obligations under the performance bond, then Public Works will not incur any additional construction contract cost that we otherwise would have incurred if the work had been carried out by A.M. Classic. Arch has obtained Public Works' records relating to the work performed by A.M. Classic under the contract and will attend the April 8, 2011, hearing. If Arch refuses to complete the work under its



performance bond, Public Works will have to pursue legal action against Arch and re-bid the work, which will lead to further delays. Arch has indicated it will attend the hearing.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

On December 2, 2008, your Board advertised and gave authority to the Director or her designee to award and execute a contract with the apparent responsible contractor with the lowest responsive bid and approve the Faithful Performance and Labor and Materials Bonds and insurance submitted by the contractor.

On March 17, 2009, Public Works awarded a contract to A.M. Classic, for the seismic strengthening of the Queensway Southbound Ramps J and K over Harbor Scenic Drive project. Arch furnished the contractually required payment and performance bonds for 100 percent of the contract amount.

The contract provides for termination of A.M. Classic's right to perform if the contractor fails to prosecute the work to provide workers materials or equipment to complete the work or fails to promptly pay its subcontractors, employees, and material suppliers.

The required start date for this project was April 15, 2010, and shortly thereafter A.M. Classic started construction of the work.

On November 19, 2010, after having completed only 35 percent of the work required by the contract, A.M. Classic demobilized from the project site. On December 7, 2010, A.M. Classic began removing equipment required to perform the work from the project site.

On December 7, 2010, Public Works sent A.M. Classic a notice to cure (the Notice) its 2-week-long failure to work on the project, identified the specific items of work that needed to be performed, and gave A.M. Classic 10 working days to cure its breaches. The notice stated that A.M. Classic would be found in default of the contract if A.M. Classic did not cure its breaches by returning to work.

Public Works met twice with A.M. Classic after the Notice was sent. On neither occasion did A.M. Classic indicate it intended to return to work. In fact, A.M. Classic did not return to work nor did it cure any of the breaches identified in the notice. Instead, at a March 3, 2011, meeting between Public Works and attorneys for A.M. Classic and Arch, A.M. Classic indicated that it would prefer to be terminated "for convenience" rather than "for cause", i.e., for abandoning the project.

Although through the course of the project there were concerns about the contractor's performance—e.g., the contractor's reluctance to start work due to perceived constructability issues—it is A.M. Classic's failure to provide workers, materials and equipment to perform the work and A.M. Classic's failure to pay its subcontractors and vendors that has led to the recommendation to your Board that Public Works terminate A.M. Classic's right to perform under the contract.

In fact, Public Works went to extraordinary lengths to assist A.M. Classic including accommodating significant design changes as a value engineering change proposal, preparing the Traffic Control Plans that had to be modified because of A.M. Classic's value engineering change, absorbing the expense of sending an inspector to Missouri to inspect steel piles to be used in the work, and twice advancing the money to pay for the steel piles when it was A.M. Classic's responsibility to pay for all materials used in the work.

A.M. Classic's claim that its failure to return to work was justified by Public Works' failure to make timely progress payments to AM. Classic is directly contradicted by the following facts:

Of the \$3,840,516, total contract amount, payment to AM. Classic in the amount of \$1,177,463 has been authorized for an estimated 35 percent performance of the work. An additional \$130,829.22 is being withheld as contractually authorized retention. Because of A.M. Classic's failure to pay its vendors and subcontractors, Public Works is statutorily barred from paying \$142,299 of the \$3,840,516.

Although AM. Classic alleges underpayment by Public Works, its explanations are vague, incomplete, and unsubstantiated. A.M. Classic has indicated it believes it was undercompensated for a utility delay, but the costs AM. Classic submitted contained miscalculations and sought reimbursement for equipment not affected by the delay. Public Works paid what it calculated was owed and shared those calculations with AM. Classic.

Contrary to Mr. Mahdavi's statement to your Board on March 8, 2011, that A.M. Classic had not been paid "even one day of delay," Public Works granted A.M. Classic four weeks of delay as the result of utility conflicts and estimated and paid a reasonable amount pending documentation from A.M. Classic.



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~~The contract specifications provide for the termination of the contractor without liability for damage by your Board if your Board finds that the contractor has defaulted.~~

### **ENVIRONMENTAL DOCUMENTATION**

On April, 17, 2007, Agenda Item 44, your Board found this project statutorily exempt from the provisions of the California Environmental Quality Act.

### **CONTRACTING PROCESS**

In accordance with the project's performance bond requirements, the surety is obligated to step in and complete the work **unless it finds that Public Works' termination of A.M. Classic's right to perform under the contract was unjustified.**


### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

It is not anticipated the recommended action will have a significant impact on residents or motorists. When the project is completed, it will have a positive impact by providing more reliable bridge infrastructure for the traveling public during and immediately following seismic events.

### **CONCLUSION**

Please return one adopted copy of this letter to the Department of Public Works, Construction Division.

Respectfully submitted,

*for*   
GAIL FARBER  
Director of Public Works

GF·JTS:ss

- c Chief Executive Office (Rita Robinson)
- County Counsel
- Executive Office
- Office of Affirmative Action Compliance